

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
v.	:	No. 393-1997
	:	CRIMINAL DIVISION
LAWRENCE KNIGHT II,	:	
Defendant	:	PCRA

OPINION AND ORDER

On February 15, 2012, the Defendant filed a *Pro Se* Post Conviction Relief Act (PCRA) Petition, which appears to be the Defendant’s fifth PCRA Petition to date, as well as a “Nunc Pro Tunc Motion to Correct an Illegally Imposed Unconstitutional Violative [sic] Sentence” on February 22, 2012, which the Court will incorporate into the Defendant’s PCRA Petition¹.

Pursuant to 42 Pa.C.S. §9545(b)(1), a PCRA Petition must be filed within one year of the date the judgment becomes final, or fall into one of the enumerated exceptions. On October 7, 1999, Judge Brown resentenced the Defendant to an aggregate term of six (6) to twenty-five (25) years in prison plus a consecutive fifteen (15) year term of probation. No appeal was filed from this sentence; therefore, the Defendant’s sentence became final in November of 1999. Therefore, in order for the Defendant’s Petition to be timely, one of the exceptions under 42 Pa.C.S. §9545(b)(1) must apply to the facts of the Defendant’s case. The exceptions set forth in 42 Pa.C.S. §9545(b)(1) are as follows:

- (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the

¹ On July 28, 2000, the Defendant filed his first PCRA Petition which was denied by the Honorable Kenneth D. Brown on June 11, 2002. The denial of the Defendant’s first PCRA Petition was affirmed by the Superior Court in an opinion filed September 29, 2003. Subsequently, on September 9, 2009, Judge Brown denied the Defendant’s Motion for a New Trial and Motion to Dismiss For Brady Violations, which the Court treated as PCRA petitions, and Judge Brown denied the Defendant’s PCRA Petition filed on August 25, 2009. On April 14, 2011 this Court dismissed the Defendant’s fourth PCRA Petition.

claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

A review of the Defendant's filings in this matter does not demonstrate that any of the exceptions apply to the Defendant's Petition. Although the Defendant repeatedly states in his filing that exonerating or impeaching evidence was concealed, which seems to elicit an exception under 42 Pa.C.S. §9545(b)(1)(ii) or (iii), he does not indicate that such facts were unknown to him during the time a timely petition could have been filed, or that this Petition was filed within sixty (60) days of when the claims could have been made. See 42 Pa.C.S. §9545(b)(2). Furthermore, although the legality of a sentence is always subject to review under the PCRA, the claim must still comply with the timeliness rules or satisfy one the exceptions thereto, or else the courts is without jurisdiction to decide the matter. See Commonwealth v. Fahy, 737 A.2d 214 (Pa. 1999) (See also Commonwealth v. Chester, 722 A.2d 1242 (Pa. 1999)). As the Defendant has failed to meet one of the timeliness exceptions, this Court is without jurisdiction to review the merits of the Petition.

Based upon the foregoing, the Court finds no basis upon which to grant the Defendant's PCRA petition. Additionally, as the Court finds that no purpose would be served by conducting any further hearing, none will be scheduled. Pursuant to Pennsylvania Rule of Criminal Procedure 907(1), the parties are hereby notified of the Court's intention to deny the Petition.

The Defendant may respond to this proposed dismissal within twenty (20) days. If no response is received within that time period, the Court will enter an Order dismissing the Petition.

ORDER

AND NOW, this _____ day of March, 2012, the Defendant is notified that it is the intention of the Court to dismiss the Defendant's PCRA petition unless he files an objection to that dismissal within twenty days (20) of today's date. This decision will be served on the Defendant as set forth in Pa.R.Crim.P. 907(1).

By the Court,

Nancy L. Butts, President Judge

xc: DA
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